

Appl. No. 09/614,389  
Preliminary Amdt. fax-filed on October 15, 2004

PATENT

### REMARKS/ARGUMENTS

Claims 1, 3-12, 14-18, 20, 21, 24-27, 62, 65-70, 75, 76, 92, 102, 105, 107, and 114 were pending. Applicants gratefully acknowledge the allowance of claims 16-18, 20, 21 and 24-27. The claims have been amended and canceled as noted above. Reexamination and reconsideration of the claims, as amended, are respectfully requested.

As an initial matter, Applicants note that the Office Action Summary indicates that claims 71, 72 and 74 are subject to restriction and have been withdrawn. Applicants note that these claims were canceled in a prior Office Action.

Claims 1, 10, 11, 12, and 14 continue to be rejected for the same reasons set forth in the Office Action mailed December 12, 2002.

In response to Applicants arguments made in the Second Supplemental Response, the Examiner notes that as the rejected claims encompass "oxygen," any patient who may have stopped breathing and who would have received oxygen would come within the scope of the claims.

Without conceding that the rejected claims would be anticipated by the administration of oxygen to a non-breathing patient, Applicants have now amended all rejected and objected-to independent claims to recite either (1) a group of therapeutic gases not including oxygen, or (2) that the therapeutic method is being applied to a breathing patient, i.e., a patient who has not stopped breathing.

In particular, please note that claim 1 has been amended to recite the infusion of a group of therapeutic gasses "consisting of carbon dioxide, nitric oxide, helium, dilute mixtures of nitric oxide, and isocapnic mixtures of acid gases." As this list does not include oxygen, Applicants believe that claim 1 is now in condition for allowance. Applicants also note that dependent claim 3, from which this list was derived, was not rejected in the prior action, but was merely "objected to."

For these reasons, it is believed that claim 1, as amended, and all claims dependent thereon are now in condition for allowance.

Independent claim 102 was "objected to" in the office Action. Applicants are not sure why the claim was objected to, but note that the claims has been amended to clarify that the

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therapeutic gas is delivered to a "breathing person." Thus, the Examiner's observation concerning the delivery of oxygen to non-breathing patients is no longer applicable.

Thus, it is believed that independent claim 102, as amended, as well as all claims dependent thereon are now in condition for allowance.

Independent claim 107 has been amended similarly to independent claim 102, and it is believed that claim 107 as well as all claims dependent thereon are also in condition for allowance.

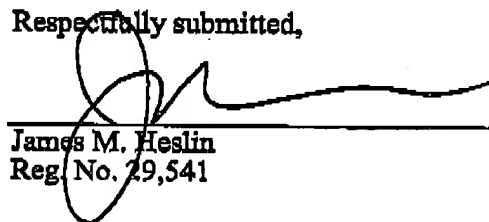
Applicants further note that allowed claim 16 has been amended to clarify that patient is refraining from breathing the "therapeutic gas." While it is clear from the specification that often the patent will simply stop breathing while infusing the therapeutic gas, in some instances the patient may be able to continue breathing through the mouth while isolating the nasal cavity from the therapeutic gas. Independent claims 1 and 107 have been similarly amended.

As a final matter, Applicants submit a Declaration of Julia S. Rasor, one of the inventors, setting forth her remembrance concerning development of the invention claimed herein. A similar Declaration of Ned. S. Rasor, the other inventor, was previously submitted.

In view of the above amendments and remarks, Applicants believe that all remaining claims are now in condition for allowance and request that the application be passed to issue at an early date.

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at (650) 326-2400.

Respectfully submitted,

  
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Attachment: Declaration of Julie S. Rasor  
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